

BEFORE THE NEW JERSEY BOARD OF PUBLIC UTILITIES

**IN THE MATTER OF ESTABLISHMENT OF A
UNIVERSAL SERVICE FUND PURSUANT TO SECTION 12 OF THE
ELECTRIC DISCOUNT AND ENERGY COMPETITION ACT OF 1999**

BPU Docket No. EX00020091

ADDITIONAL PREPARED DIRECT TESTIMONY AND EXHIBITS

REGARDING AN INTERIM UNIVERSAL SERVICE PROGRAM

FOR THE 2000 - 2001 HEATING SEASON

ROGER D. COLTON

SUBMITTED ON BEHALF OF

Division of Ratepayer Advocate
Newark, New Jersey

November 2, 2000

1 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

2 A. My name is Roger Colton. My address is 34 Warwick Road, Belmont, MA 02478.

3 **Q. ARE YOU THE SAME ROGER COLTON WHO HAS PREVIOUSLY**
4 **TESTIFIED ON BEHALF OF THE DIVISION OF RATEPAYER ADVOCATE IN**
5 **THIS PROCEEDING?**

6 A. Yes.

7 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY TODAY?**

8 A. My testimony is to respond to the Board's request for supplemental information regarding
9 an interim universal service program for the 2000 - 2001 heating season. My
10 recommended interim program is described in detail in my previous testimony to the
11 Board. In this supplemental testimony I will elaborate on the important policy reasons for
12 the Board to act *now* to implement an interim Universal Service program. I will also
13 outline the goals which can be achieved during the current winter heating season *if the*
14 *Board issues an Order by December 1, 2000.* As explained in Ratepayer Advocate's
15 previous submissions in this matter, a Universal Service program for New Jersey must
16 contain three key elements: (1) affordable bills, (2) arrearage forgiveness and crisis
17 assistance and (3) aggregation programs. It is of the utmost importance to begin the
18 process of implementing all three elements as quickly as possible, so that New Jersey's
19 low income residents can begin receiving assistance during the current winter heating
20 season.

1 **I. INTRODUCTION AND POLICY OVERVIEW.**

2 **Q. PLEASE DESCRIBE THE LEGISLATION THAT UNDERLIES A UNIVERSAL**
3 **SERVICE PROGRAM IN NEW JERSEY?**

4 A. First and foremost, the New Jersey legislature has recognized the need to ensure universal,
5 *affordable*, home energy service in this state. It is hard to find language that is clearer than
6 when the New Jersey legislature stated that it is the policy of New Jersey to “[e]nsure
7 *universal access to affordable* and reliable electric power and natural gas service.”
8 *N.J.S.A. 48:3-50(a)(4)*. The legislature then directed the Board to determine the programs
9 and funding needed to provide universal service consistent with this policy. *N.J.S.A. 48:3-*
10 60(b).

11 **Q. WHAT DID THE LEGISLATURE PROVIDE FOR SPECIFICALLY?**

12 A. New Jersey's retail choice legislation provides for the creation of a Universal Service Fund
13 (Section 12(b)). The legislation provides that the Board shall determine:
14 Ē the level of funding;
15 Ē the appropriate administration;
16 Ē the purposes and programs to be funded with monies from the fund;
17 Ē which programs should be provided as part of the provision of regulated services
18 which provide a public benefit;
19 Ē whether certain designated funds should be deposited in the fund; and
20 Ē whether new charges should be imposed to fund new or expanded social programs.

1 The legislation is mandatory in nature. The Universal Service Fund is “established” not
2 merely authorized. The Fund is made “nonlapsing.” The Board's tasks are stated as
3 mandatory obligations (*i.e.*, “the Board *shall* determine”).

4 **II. THE NEED FOR AN INTERIM PROGRAM.**

5 **Q. WHY IS THERE A NEED FOR THE BOARD TO IMPLEMENT AN INTERIM**
6 **UNIVERSAL SERVICE PROGRAM THIS WINTER?**

7 **A.** Several responses may be made to this question. First, however, is the simple observation
8 that there is a need because the legislature has determined that there is a need. The
9 legislature has declared the policy of New Jersey to be that rates are not simply to be
10 judged by whether they are cost- or market-based. but by whether they are “affordable” as
11 well. “Affordability” is not simply a happy coincidence if achieved through cost-based
12 rates. Instead, the legislature has declared the policy of New Jersey to be to “*ensure*
13 universal access to affordable. . .electric power and natural gas service.” (emphasis
14 added).

15 **Q. IS THERE EVIDENCE THAT THIS POLICY IS NOT NOW BEING ACHIEVED?**

16 **A.** Yes. I presented evidence that affordable energy service is not provided when measured
17 in terms of energy burden. Energy burden is a household's energy bill divided by that
18 household's income (*i.e.*, the energy bill as a percentage of income). Virtually every low-
19 income household in New Jersey, when measured by energy burden, faces an unaffordable
20 home energy bill.

1 In addition, the evidence shows that low-income households face unaffordable service
2 when measured by their ability to retain debt-free service. Low-income households are
3 disconnected for nonpayment at a rate from four to five times higher than the total
4 population. Moreover, low-income households have arrears at rates three to four times
5 higher than the total population.¹¹ Each of these facts shows that the policy of “universal
6 access to affordable service” is not now being achieved in New Jersey.

7 Finally, the evidence shows that even low-income households that pay their bills do not
8 have universal access to affordable service. In order to pay bills, low-income households
9 have been shown to skip meals; to refuse to take medicine prescribed for their healthy
10 well-being; to burn “alternative fuels” such as furniture and used tires; and to engage in
11 “conservation activities” such as denying themselves hot water entirely by completely
12 shutting off hot water heaters. Even if the bills of such low-income consumers are paid,
13 these bills cannot be called “affordable.”

14 **Q. WHAT DO YOU CONCLUDE?**

15 A. As a creature of the legislature, the Board has an obligation to ensure universal access to
16 affordable electric and natural gas service. The Board has no discretion to determine

¹¹ While 9.8% of non-poor families cannot pay their utility bills in full, 32.4% of poor families cannot do so. According to the Census Bureau, while 1.8% of non-poor families had their electricity or natural gas disconnected for nonpayment, 8.5% of poor families suffered this same deprivation. This disconnection ratio increased even further for AFDC recipients, to 10.5%. U.S. Census Bureau, Extended Measures of Well-Being: 1992, P70-50RV (November 1995).

1 whether or not this is an appropriate role for the Board. The legislature has already
2 decided that there “shall” be a program. The role of the Board now is to implement that
3 legislatively-declared policy in as effective fashion as possible. The Board has an
4 obligation to implement effective programs to ensure the universal access to affordable
5 electric power and natural gas service. The legislature has imposed upon the Board an
6 obligation to create such universal service programs, funded by a Universal Service
7 charge, as are necessary to ensure that the legislative policy is achieved.

8 The implementation of an Interim Universal Service Program, as discussed below as well
9 as in my Direct Testimony, is the necessary first step to achieving the legislative policy to
10 “ensure universal access to affordable. . .electric power and natural gas service.” The time
11 to begin is now. The step to begin with is the Interim Proposal, set forth by the Ratepayer
12 Advocate.

13 **Q. IS THERE A PARTICULAR REASON TO COUPLE UNIVERSAL SERVICE**
14 **INITIATIVES WITH ELECTRIC AND/OR NATURAL GAS RESTRUCTURING**
15 **PROGRAMS?**

16 A. Yes. Natural gas and electric retail choice programs tend to adversely affect low-income
17 customers, while at the same time offering fewer of the benefits of retail competition.
18 Studies in California and the Pacific Northwest have documented a move to higher fixed
19 fees (such as minimum bills and higher customer charges) under retail choice, which tends
20 to disproportionately adversely affect the low-income, low use consumer. Work I

1 undertook for a task force of the Colorado legislature documented an increased move to
2 supplemental fees (as well as to higher supplemental fees) under retail choice, including
3 late payment fees, fees for “field collection” and fees for other services that previously had
4 been collected in bundled rates. Work by the National Consumer Law Center (“NCLC”)
5 found that increased base rates tended to be higher for small use customers under electric
6 retail choice; similar work I have done documented the same result for small use natural
7 gas customers under a restructured environment. The results are not surprising. A June
8 2000 study by the National Regulatory Research Institute (“NRRI”) reported that the
9 participation in retail choice varies based on income, with an increasing proportion of
10 customers choosing alternative suppliers as income increases. In addition, work I did for
11 the National Association of Regulatory Utility Commissioners/National Council on
12 Competition in the Electric Industry, found that low-income consumers were less likely to
13 participate because of higher search costs, lower rates of savings (due to lower
14 consumption), and higher “hurdle rates.”^{12\} Whatever the cause, however, the range of
15 affordability problems identified above --e.g., high energy burdens, high rates of
16 disconnections and arrears, high rates of unhealthy budget substitutions to facilitate utility
17 bill payment-- will become worse under electric and natural gas restructuring.

18 **III. IMPLEMENTATION OF AN INTERIM PROGRAM**

^{12\} A “hurdle rate” is that rate of return on investment necessary to prompt a consumer to make a decision. If a consumer invests \$100, and demands a return of that \$100 in three years, he or she has a “hurdle rate” of 33%. Low-income energy hurdle rates approach 100% (a payback of one year), compared to general residential hurdle rates in the range of 20 to 30%.

1 **FOR THIS WINTER HEATING SEASON.**

2 **Q. DO YOU HAVE AN INITIAL OVERVIEW OF YOUR SUPPLEMENTAL**
3 **INFORMATION REGARDING AN INTERIM PROGRAM?**

4 A. Yes. There are three overarching observations that I wish to re-articulate about an interim
5 program:

6 Ē An interim program should not have a substantively different structure than the
7 permanent program. Instead, to the extent that a permanent program cannot be
8 implemented at one time, which is now likely for the Year 2000 - 2001 winter
9 heating season, the interim program should represent a phase-in of the permanent
10 program.

11 Ē The only thing that stands in the way of the implementation of an interim program
12 in New Jersey is a Board order directing that such a program be placed into
13 operation. I describe the steps below that would be necessary to place such an
14 interim program into operation.

15 Ē Finally, an interim program should (and can) be implemented that will, even if not
16 representing the full range of services provided through the Ratepayer Advocate's
17 permanent program, deliver real dollars of benefit to low-income consumers this
18 coming winter heating season.

19 I will further explain the application of these overarching principles, where needed, below.

1 **Q. PLEASE EXPLAIN THE FIRST STEP IN ENROLLING LOW-INCOME**
2 **CUSTOMERS IN AN INTERIM PROGRAM FOR THIS WINTER HEATING**
3 **SEASON.**

4 A. The first step involved with enrolling low-income customers in an interim program for this
5 coming winter heating season is the outreach plan/consumer education plan through which
6 low-income consumers will be educated about universal service benefits. I described the
7 doors through which low-income customers should enter a universal service program in
8 my direct testimony. The primary door should be through the automatic enrollment
9 process recommended in my direct testimony. The efforts needed to ensure that this door
10 could be open during the coming heating season would involve negotiation of a contract
11 to provide such services through the state. The commencement of such negotiations
12 would require only a Board order approving such a process. The second door would be
13 through community-based organizations (“CBOs”) that could provide income certification
14 for those customers who could not be certified through the state. The efforts needed to
15 ensure that this door would be open again depend solely on a Board order approving the
16 commencement of such negotiations. The third door would be through utility referral of
17 low-income payment-troubled customers to the universal service program. These
18 customers might have their income certified through either the state agency process or
19 through a CBO. Finally, LIHEAP recipients should be placed into the Interim Universal
20 Service program.

1 **Q. PLEASE EXPLAIN THE SECOND STEP THAT WOULD BE NEEDED TO**
2 **DELIVER UNIVERSAL SERVICE BENEFITS THROUGH AN INTERIM**
3 **PROGRAM THIS WINTER.**

4 A. The second step would involve identifying those customers who should be invited in
5 through the intake doors that I have previously discussed. This step would involve New
6 Jersey's utilities making judgments about what customers are low-income. By "low-
7 income," I mean that a utility could, based on existing information, reasonably conclude
8 that these customers are low-income customers. Customers who receive benefits through
9 LIHEAP or Lifeline; customers who are protected through the low-income winter
10 protections; customers who have been identified as low-income in the negotiation of
11 deferred payment arrangements; or customers that the utility has identified as "low-
12 income" for any other reason, would all meet this standard. Those low-income customers
13 who are also payment-troubled would be targeted for enrollment in the interim universal
14 service program. Developing a process for identifying payment-troubled customers who
15 are presumptively low-income should require little effort.

1 **Q. WHAT IS THE THIRD STEP IN THE PROCESS OF OPENING THE DOORS**
2 **FOR AN INTERIM UNIVERSAL SERVICE PROGRAM DURING THE YEAR**
3 **2000/2001 WINTER HEATING SEASON?**

4 A. After negotiating contracts with the state and with the requisite CBOs, there needs to be a
5 protocol developed through which enrollment information can be transferred between the
6 state and utilities, as well as between the CBOs and the utilities. This protocol needs to be
7 kept simple. Under the Interim Universal Service Program proposed by the Ratepayer
8 Advocate, the only information that needs to be transferred immediately to utilities, for
9 example, is the *fact* of program enrollment. On an interim basis, no additional information
10 needs to be provided by the utilities to the CBOs or by the CBOs to utilities.

11 **Q. WHAT IS THE FOURTH STEP IN OPENING THE DOORS TO A UNIVERSAL**
12 **SERVICE PROGRAM THIS WINTER HEATING SEASON?**

13 A. The final step toward opening the universal service program this winter heating season
14 involves deciding what benefits should be provided to those customers that are enrolled. I
15 recommend that all low-income customers enrolled in the universal service program for
16 this winter heating season be immediately placed on a levelized budget payment plan.
17 Through such a plan, the low-income customer would pay his or her bills for current usage
18 plus some pre-determined payment toward their arrears. As I recommended in my Direct
19 Testimony on an interim program filed in July of this year, utilities should provide a \$10
20 credit each month toward arrears (up to a maximum equal to the difference between the
21 existing arrears and the customer's payments). The credit can be provided in the form of a

1 payment from the universal service fund to the utility. In this way, no utility would need
2 to develop any new billing or accounting procedures to manage the “forgiveness” process.
3 The credit would show up as a bill payment.

4 **Q. WHY IS THIS FOURTH STEP IMPORTANT?**

5 A. The fourth step allows payment-troubled low-income customers to enter the Universal
6 Service Program during the upcoming winter heating season and to receive real dollars of
7 benefits during this winter heating season. The fourth step is important, also, in that it
8 demonstrates that an interim program can be placed on the streets without a need to
9 develop new processes that would require months to develop and implement. The
10 processes that would be used in the interim program recommended above all currently
11 exist.

12 **Q. WHEN SHOULD THE INTERIM PROGRAM “OPEN ITS DOORS” TO**
13 **ENROLLMENT?**

14 A. Given the recommendations above, and assuming a Board order issues in the period of
15 November 15 to December 1, 2000, the Interim Program should be able to begin
16 enrollment of low-income customers no later than March 1, 2001.

1 **Q. IS IT POSSIBLE TO ADD A FIXED CREDIT COMPONENT TO THIS INTERIM**
2 **PROGRAM IN SHORT ORDER?**

3 A. Yes. If developed in the fashion recommended in my July, 2000 testimony, this Interim
4 Program should be able to add a fixed credit program component no later than July 1,
5 2001.

6 **Q. WHERE SHOULD AN INTERIM PROGRAM OPERATE?**

7 A. In my direct testimony I recommended that the interim program be operated as a
8 geographically discrete ramp-up to a statewide program. Specifically. I recommended that
9 the Board consider establishing interim programs in Newark/Camden (PSE&G), Atlantic
10 City (South Jersey Gas/Conectiv), Asbury Park/Long Branch (NJNG/GPU), and Elizabeth
11 (Elizabethtown Gas/PSE&G). This geographic scope remains valid, and I continue to
12 endorse such a scope.

13 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

14 A. Yes it does.